



element of his claim, all other issues of fact become immaterial and the moving party is entitled to judgment as a matter of law. *See Celotex Corp. v. Catrett*, 477 U.S. 317 (1986); *Bennett v. Parker*, 898 F.2d 1530 (11th Cir. 1990). As the Eleventh Circuit has explained:

Facts in dispute cease to be "material" facts when the plaintiff fails to establish a prima facie case. "In such a situation, there can be 'no genuine issue as to any material fact,' since a complete failure of proof concerning an essential element of the non-moving party's case necessarily renders all other facts immaterial." [Citation omitted]. Thus, under such circumstances, the public official is entitled to judgment as a matter of law, because the plaintiff has failed to carry the burden of proof. This rule facilitates the dismissal of factually unsupported claims prior to trial.

898 F.2d at 1532.

The following facts are undisputed. Plaintiff's last day of employment with defendant was May 25, 1999. On December 21, 1999 plaintiff filed an EEOC charge based on conduct occurring during the course of her employment with defendant. The EEOC dismissed plaintiff's EEOC charge "because it was not filed within the time limit required by law."

Defendant has raised the issue of untimeliness, alleging that the EEOC charge was filed more than 180 days after the allegedly discriminatory events occurred. In *Zipes v. Trans World Airlines, Inc.*, 455 U.S. 385, 393, 102 S.Ct. 1127, 1132, 71 L.Ed.2d 234 (1982), the Supreme Court held that "filing a timely charge of discrimination with the EEOC is not a jurisdictional prerequisite to suit in federal court [under Title VII], but a requirement that, like a statute of limitations, is subject to waiver, estoppel, and equitable tolling."

After a timeliness issue is raised, plaintiff bears the burden of proving an equitable tolling of the limitations period. *Ross v. Buckeye Cellulose Corp.*, 980 F.2d 648, 661 (11<sup>th</sup> Cir. 1993). There is no evidence in the record to warrant a finding of equitable tolling. Plaintiff knew or should have known of the alleged discriminatory acts more than 180 days prior to December 21, 1999. Plaintiff complained in her EEOC charge of sexual harassment during her employment with defendant. The 180 day period began to run no later than May 25, 1999, the last day of plaintiff's employment with defendant.

There is no genuine issue as to any material fact. Defendant, therefore, is entitled to judgment as a matter of law. A separate final judgment consistent with this memorandum of opinion will be entered simultaneously herewith.

As to the foregoing it is SO ORDERED this the 10<sup>th</sup> day of August, 2001.

  
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PAUL W. GREENE  
UNITED STATES MAGISTRATE JUDGE